IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 5449 of 2007(W)

OS.362/2006 of ADDL.MUNSIFF COURT, KOCHI

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PETITIONER:

SALEELA CHITHAMBARAN, AGED 52,
W/O.K.N. CHITHAMBARAN, KAITHAVALAPPIL
HOUSE, NAYARAMBALAM P.O., NAYARAMBALAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.T.N.SURESH
SRI.ROY THOMAS

RESPONDENT:

BABU. R.G., AGED 40, S/O.R.K. GOPALAN,
RAMANKODOTH HOUSE, NAYARMBALAM P.O.,
NAYARAMBALAM, ERNAKULAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 5449 of 2007 W

JUDGMENT

Petitioner is the defendant in O.S.No.362/06 on the file of the Addl. Munsiff's Court, Kochi. He applied for issue of a commission to ascertain certain details, which, according to him, were the details asked for to be ascertained by filing a work memo before Advocate Commissioner Santhi K.Pai, when she visited the property on an earlier occasion. The grievance of the petitioner is that the court below has appointed the very same Advocate Commissioner, who purposely avoided to ascertain the details despite handing over the work memo to her, while she visited the property on the earlier occasion. The court below, in the impugned order, has observed that consequent on filing of I.A.No.2838/06 in the above suit, on which, the impugned order is passed, the Commissioner has filed an additional report stating that the work

memo was not considered, as there was no direction from the court. It was upto the petitioner to file the work memo before court and cause direction being obtained, including direction regarding payment of proportionate bata to the Commissioner. It was for reason that such orders were not obtained that the Advocate Commissioner did not ascertain those details.

2. It is worthy to note in this context that the Commissioner would be accused of ascertaining the details not asked for, if she ascertains the details asked for by the petitioner without any orders from court. When already there is a report of Advocate Commissioner Santhi K.Pai, no impropriety can be alleged, when the same Advocate Commissioner has been appointed on the application of the defendant, vide impugned order.

This writ petition, in the circumstances, is devoid of merit and is dismissed.

19th February, 2007 (K.P.Balachandran, Judge)

tkv